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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**  
7

8 EDILFREDO CHAVEZ,

9 Petitioner,

3:14-cv-00373-RCJ-VPC

10 vs.

**ORDER**

11 ROBERT LeGRAND, *et al.*,

12 Respondents.  
13 \_\_\_\_\_ /  
14

15 Introduction

16 In this habeas corpus action, the respondents have filed a motion to dismiss, arguing that the  
17 habeas petition includes unexhausted claims and must be dismissed, and the petitioner, Edilfredo  
18 Chavez, has filed a motion for stay, seeking a stay of this action while he exhausts, in state court, his  
19 unexhausted claims. The court finds that Chavez's first amended petition for writ of habeas corpus  
20 contains both claims exhausted in state court and claims not exhausted in state court. The court  
21 finds, further, that Chavez shows that a stay is warranted. The court will stay this action pending  
22 Chavez's return to state court to exhaust his unexhausted claims.

23 Background

24 On March 19, 2009, Chavez was convicted and sentenced as follows, after a jury trial, in  
25 Nevada's Eighth Judicial District Court, of crimes committed against his wife's young sister:  
26 Count 1, sexual assault with a minor under fourteen years of age, 420 months to life in prison;

1 Count 3, sexual assault with a minor under fourteen years of age, 420 months to life in prison,  
2 consecutive to the sentence on Count 1; Count 4, sexual assault with a minor under fourteen  
3 years of age, 420 months to life in prison, concurrent with the sentence on Count 3; Count 11,  
4 statutory sexual seduction, 12 to 32 months in prison, concurrent with the sentence on Count 4;  
5 Count 13, statutory sexual seduction, 12 to 32 months in prison, concurrent with the sentence on  
6 Count 11; Count 15, statutory sexual seduction, 12 to 32 months in prison, concurrent with the  
7 sentence on Count 13; Count 16, lewdness with a child under the age of fourteen, 120 months to life  
8 in prison, concurrent with the sentence on Count 15; Count 19, lewdness with a child under the age  
9 of fourteen, 120 months to life in prison, concurrent with the sentence on Count 16; Count 20, use of  
10 a minor in producing pornography, 60 months to life in prison, concurrent with the sentence on  
11 Count 19; Count 21, use of a minor in producing pornography, 60 months to life in prison,  
12 concurrent with the sentence on Count 20; Count 22, possession of a visual presentation depicting  
13 sexual conduct of a child, 12 to 36 months in prison, concurrent with the sentence on Count 21; and  
14 Count 23, possession of a visual presentation depicting sexual conduct of a child, 12 to 36 months in  
15 prison, concurrent with the sentence on Count 22. *See* Judgment of Conviction, Exhibit 37.<sup>1</sup>

16 Chavez appealed. *See* Notice of Appeal, Exhibit 40; Appellant's Opening Brief, Exhibit 42.  
17 On May 12, 2011, the Nevada Supreme Court affirmed. *See* Order of Affirmance, Exhibit 45.

18 On March 5, 2012, Chavez filed a petition for writ of habeas corpus in the state district court.  
19 Exhibit 48. Counsel was appointed for Chavez, and, with counsel, he filed supplemental points and  
20 authorities in support of his habeas petition. Exhibit 57. The state district court held an evidentiary  
21 hearing on December 18, 2012. *See* Reporter's Transcript of Evidentiary Hearing, Exhibit 59. The  
22 state district court denied the petition in a written order entered on February 7, 2013. *See* Findings  
23 of Fact, Conclusions of Law and Order, Exhibit 61. Chavez appealed. *See* Notice of Appeal,  
24 Exhibit 63; Docketing Statement, Exhibit 65; Appellant's Opening Brief, Exhibit 66; Appellant's

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26 <sup>1</sup> The exhibits referred to in this order were filed by petitioner, and are found in the record at ECF Nos. 10-19.

1 Reply Brief, Exhibit 68. The Nevada Supreme Court affirmed on June 24, 2014. *See* Order of  
2 Affirmance, Exhibit 71.

3 On July 17, 2014, this court received from Chavez, for filing, a *pro se* federal petition for  
4 writ of habeas corpus. *See* Petition for Writ of Habeas Corpus (ECF No. 4). The court subsequently  
5 appointed counsel for Chavez. *See* Order entered July 31, 2014 (ECF No. 3). With counsel, Chavez  
6 filed a first amended habeas petition on December 23, 2014 (ECF No. 9). Chavez's first amended  
7 petition, which is now his operative habeas petition, includes seven claims, designated Grounds 1, 2,  
8 3A, 3B, 3C, 4A and 4B.

9 On February 19, 2015, respondents filed a motion to dismiss (ECF No. 20). Chavez filed an  
10 opposition to the motion to dismiss (ECF No. 22), and respondents filed a reply (ECF No. 26).  
11 Chavez then filed a surreply (ECF No. 31), and respondents filed a response to the surreply  
12 (ECF No. 32). The motion to dismiss is before the court and ready for resolution.

13 On May 7, 2015, Chavez filed a motion for stay (ECF No. 23). Respondents filed an  
14 opposition to the motion for stay (ECF No. 27), and Chavez filed a reply (ECF No. 28). The motion  
15 for stay is also before the court and ready for resolution.

## 16 Discussion

### 17 Motion to Dismiss

18 In their motion to dismiss, respondents argue that Chavez's first amended petition should be  
19 dismissed because Grounds 1, 3C, 4A and 4B are unexhausted in state court (ECF No. 20).<sup>2</sup>

20 A federal court may not grant habeas corpus relief on a claim not exhausted in state court.  
21 28 U.S.C. § 2254(b). The exhaustion doctrine is based on the policy of federal-state comity, and is  
22 intended to allow state courts the initial opportunity to correct constitutional deprivations. *See*

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24 <sup>2</sup> Respondents do not, in their motion to dismiss, contest Chavez's exhaustion of Grounds 2, 3A  
25 and 3B. Chavez argues that respondents' silence in that regard constitutes a waiver. *See* Surreply in  
26 Opposition to Motion to Dismiss (ECF No. 31). However, under 28 U.S.C. § 2254(b)(3), "[a] State shall  
not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the  
requirement unless the State, through counsel, expressly waives the requirement." Respondents have  
not waived the exhaustion requirement regarding any of Chavez's claims.

1 *Picard v. Conner*, 404 U.S. 270, 275 (1971). To exhaust a claim, a petitioner must fairly present the  
2 claim to the highest state court, and must give that court the opportunity to address and resolve it.  
3 *See Duncan v. Henry*, 513 U.S. 364, 365 (1995) (*per curiam*); *Keeney v. Tamayo-Reyes*, 504 U.S. 1,  
4 10 (1992). A claim is fairly presented to the state’s highest court if, before that court, the petitioner  
5 describes the operative facts and legal theory upon which the claim is based. *See Anderson v.*  
6 *Harless*, 459 U.S. 4, 6 (1982) (*per curiam*); *Picard*, 404 U.S. at 275; *Batchelor v. Cupp*, 693 F.2d  
7 859, 862 (9th Cir. 1982).

8 The question of Chavez’s exhaustion of claims in state court is controlled by the claims that  
9 he asserted on his direct appeal (*see* Appellant’s Opening Brief, Exhibit Exhibit 42), and on the  
10 appeal in his state habeas action (*see* Appellant’s Opening Brief, Exhibit 66; Appellant’s Reply  
11 Brief, Exhibit 68).

#### 12 Ground 1

13 In Ground 1 of his first amended petition, Chavez claims that “[t]rial counsel rendered  
14 ineffective assistance of counsel, under the Sixth and Fourteenth Amendments to the United States  
15 Constitution, by failing to adequately advise Chavez of the dangers of non-acceptance of the State’s  
16 plea offer.” First Amended Petition (ECF No. 9), p. 9. Chavez did not assert this claim on either his  
17 direct appeal or the appeal in his state habeas action. *See* Appellant’s Opening Brief, Exhibit 42;  
18 Appellant’s Opening Brief, Exhibit 66; Appellant’s Reply Brief, Exhibit 68. Ground 1 is, therefore,  
19 unexhausted in state court. Chavez concedes as much. *See* First Amended Petition, p. 10;  
20 Opposition to Motion to Dismiss (ECF No. 22), p. 3.

#### 21 Ground 2

22 In Ground 2, Chavez claims: “Chavez’s rights to Due Process, Equal Protection and a fair  
23 and impartial jury under the Fifth, Sixth, and Fourteenth Amendments to the United States  
24 Constitution were violated based on the State’s use of peremptory challenges in a racially  
25 discriminatory manner.” First Amended Petition, p. 12. Chavez asserted this claim on his direct  
26

1 appeal. *See* Appellant’s Opening Brief, Exhibit 42, pp. 5-6. Ground 2 has been exhausted in state  
2 court.

3 Ground 3A

4 In Ground 3A, Chavez claims that his federal constitutional right to effective assistance of  
5 counsel was violated because “[t]rial counsel was ineffective for failing to argue the State had  
6 impermissibly exercised its peremptory challenges in a discriminatory manner on the basis of  
7 gender.” First Amended Petition, p. 19. Chavez asserted this claim on the appeal in his state habeas  
8 action. *See* Appellant’s Opening Brief, Exhibit 66, pp. 40-42, 45. Ground 3A has been exhausted in  
9 state court.

10 Ground 3B

11 In Ground 3B, Chavez claims that his federal constitutional right to effective assistance of  
12 counsel was violated because “[t]rial counsel was ineffective when he failed to object when the State  
13 argued that K.P. could not consent due to her age.” First Amended Petition, p. 21.<sup>3</sup> Chavez asserted  
14 this claim on the appeal in his state habeas action. *See* Appellant’s Opening Brief, Exhibit 66, p. 2.  
15 Ground 3B has been exhausted in state court.

16 Ground 3C

17 In Ground 3C, Chavez claims that his federal constitutional right to effective assistance of  
18 counsel was violated because “[t]rial counsel was ineffective when he failed to conduct an adequate  
19 investigation.” First Amended Petition, p. 23. Specifically, Chavez claims that his counsel did not  
20 adequately investigate potential defense witnesses Alma Pattarroyo and Wendy Linares. *See id.* at  
21 23-25.

22 Chavez made such a claim, on the appeal in his state habeas action, with respect to his trial  
23 counsel’s alleged failure to investigate Alma Pattarroyo. *See* Appellant’s Opening Brief, Exhibit 66,  
24 p. 1. This part of Ground 3C has been exhausted in state court. Respondents argue that Ground 3C,  
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26 <sup>3</sup> Because the victim in this case was a minor when the crimes occurred, Chavez refers to her  
as “K.P.” This court does the same.

1 regarding counsel's investigation of Alma Pattarroyo, is unexhausted in state court because Chavez  
 2 proffers in this court an affidavit (Exhibit 73) that he did not present in state court. That affidavit,  
 3 however, does not fundamentally alter the claim, and does not render Ground 3C unexhausted.<sup>4</sup>

4 Chavez did not, on the appeal in his state habeas action, claim that his counsel was  
 5 ineffective for failing to adequately investigate Wendy Linares. *See* Appellant's Opening Brief,  
 6 Exhibit 66. Therefore, Chavez's claim in Ground 3C that his counsel was ineffective for failing to  
 7 adequately investigate Wendy Linares is unexhausted in state court.

#### 8 Ground 4A

9 In Ground 4A, Chavez claims that his federal constitutional right to effective assistance of  
 10 counsel was violated because appellate counsel "was ineffective for failing to argue the State had  
 11 impermissibly exercised its peremptory challenges in a discriminatory manner on the basis of  
 12 gender." First Amended Petition, p. 25.<sup>5</sup> Chavez did not assert this claim on either his direct appeal  
 13 or the appeal in his state habeas action. *See* Appellant's Opening Brief, Exhibit 42; Appellant's  
 14 Opening Brief, Exhibit 66; Appellant's Reply Brief, Exhibit 68. Ground 4A is, therefore,  
 15 unexhausted in state court. Chavez concedes as much. *See* First Amended Petition, p. 25;  
 16 Opposition to Motion to Dismiss (ECF No. 22), p. 5.

#### 17 Ground 4B

18 In Ground 4B, Chavez claims that his federal constitutional right to effective assistance of  
 19 counsel was violated because appellate counsel failed to argue that the jury instructions at trial were  
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21 <sup>4</sup> This is not to say, however, that the affidavit is admissible as evidence in this federal habeas  
 22 action. *See Cullen v. Pinholster*, \_\_\_ U.S. \_\_\_, \_\_\_, 131 S.Ct. 1388, 1398 (2011) ("review under  
 23 § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the  
 merits").

24 <sup>5</sup> In Chavez's first amended petition, in the headings of Grounds 4A and 4B, there are references  
 25 to the performance of trial counsel. *See* First Amended Petition, pp. 25, 27. However, Ground 4,  
 26 overall, is clearly a claim of ineffective assistance of appellate counsel, and the arguments made in  
 Grounds 4A and 4B indicate that it is the performance of appellate counsel that is at issue. *See id.* at 25-  
 29. The court, therefore, understands the references to trial counsel in the headings of Grounds 4A and  
 4B to be misstatements, and understands Grounds 4A and 4B to be claims of ineffective assistance of  
 appellate counsel.

insufficient for the jury to adequately understand the meaning of “consent.” *See* First Amended Petition, pp. 27-29. This claim is unexhausted in state court. It was not raised on either Chavez’s direct appeal or the appeal in his state habeas action. *See* Appellant’s Opening Brief, Exhibit 42; Appellant’s Opening Brief, Exhibit 66; Appellant’s Reply Brief, Exhibit 68.

Chavez argues that he raised the claim before the Nevada Supreme Court in the following passage in the conclusion of his opening brief on the appeal in his state habeas action:

In all, the failures and/or inadequacies of trial and appellate counsel, viewed within the contextual paradigm of ineffective assistance of counsel, can be summed up as the tacit failure to investigate the facts of this case, to prepare for trial, *e.g.*, study the elements of the offense and/or investigate relevant issues as they relate to the constitutional improprieties of the State’s offered jury instructions, which deprived the Appellant of a fair trial and violated his constitutional rights. Of special concern is trial counsel’s insipid failure to focus on the issue of “consent” in the jury instructions. Jury instructions are the road map that takes the jury’s reasoning the direction that you want them to go. No jury instruction on this *controlling issue* was proffered by trial counsel and none was even thought of on the most relevant issue necessary to eliminate the most serious charges levied.

Appellant’s Opening Brief, Exhibit 66, pp. 42-43 (emphasis in original) (footnote omitted); *see also* Opposition to Motion to Dismiss, p. 6. This passage, however, is ambiguous regarding whether Chavez was faulting his trial counsel or his appellate counsel, or both, for failing to challenge the jury instructions regarding “consent.” Moreover, this passage is part of the conclusion of the opening brief; it appears to refer back to claims made elsewhere in the brief. Nowhere in the brief did Chavez make clear that he was making a claim of ineffective assistance of his appellate counsel for failing to challenge the jury instructions regarding “consent.” *See* Appellant’s Opening Brief, Exhibit 66, pp. 1-3 (listing issues presented on appeal). Ground 4B is unexhausted.

#### Conclusion Regarding Exhaustion of Claims

The court, then, finds Chavez’s first amended petition to be “mixed,” in that it contains both claims exhausted in state court and claims not exhausted in state court. The following of Chavez’s claims have been exhausted: Grounds 2, 3A, 3B, and 3C (to the extent based on trial counsel’s alleged failure to investigate Alma Pattarroyo). The following of Chavez’s claims are unexhausted:

1 Grounds 1, 3C (to the extent based on trial counsel's alleged failure to investigate Wendy Linares),  
 2 4A, and 4B.

3 Motion for Stay

4 Chavez requests, in his motion for stay, that this action be stayed pending his exhaustion in  
 5 state court of the claims in Grounds 1, 3C, 4A and 4B. *See* Motion for Stay (ECF No. 23).

6 In *Rhines v. Weber*, 544 U.S. 269 (2005), the United States Supreme Court circumscribed the  
 7 discretion of federal district courts to impose stays to facilitate habeas petitioners' exhaustion of  
 8 claims in state court. The *Rhines* Court stated:

9 [S]tay and abeyance should be available only in limited circumstances. Because  
 10 granting a stay effectively excuses a petitioner's failure to present his claims first to  
 11 the state courts, stay and abeyance is only appropriate when the district court  
 12 determines there was good cause for the petitioner's failure to exhaust his claims first  
 13 in state court. Moreover, even if a petitioner had good cause for that failure, the  
 14 district court would abuse its discretion if it were to grant him a stay when his  
 15 unexhausted claims are plainly meritless. *Cf.* 28 U.S.C. § 2254(b)(2) ("An application  
 16 for a writ of habeas corpus may be denied on the merits, notwithstanding the failure  
 17 of the applicant to exhaust the remedies available in the courts of the State").

14 \* \* \*

15 [I]t likely would be an abuse of discretion for a district court to deny a stay and to  
 16 dismiss a mixed petition if the petitioner had good cause for his failure to exhaust, his  
 17 unexhausted claims are potentially meritorious, and there is no indication that the  
 18 petitioner engaged in intentionally dilatory litigation tactics. In such circumstances,  
 19 the district court should stay, rather than dismiss, the mixed petition.

18 *Rhines*, 544 U.S. at 277-78.

19 Later, in the context of the procedural default doctrine, the Supreme Court held,:

20 [W]hen a State requires a prisoner to raise an ineffective-assistance-of-trial-counsel  
 21 claim in a collateral proceeding, a prisoner may establish cause for a default of an  
 22 ineffective-assistance claim in two circumstances. The first is where the state courts  
 23 did not appoint counsel in the initial-review collateral proceeding for a claim of  
 24 ineffective assistance at trial. The second is where appointed counsel in the  
 25 initial-review collateral proceeding, where the claim should have been raised, was  
 26 ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668 (1984).

24 *Martinez v. Ryan*, 132 S.Ct. 1309, 1318 (2012). In 2014, the Ninth Circuit Court of Appeals applied  
 25 *Martinez* to the showing of good cause required for exhaustion stays under *Rhines*. "[W]e hold that  
 26 the *Rhines* standard for [ineffective-assistance-of-counsel]-based cause is not any more demanding





1 96-97. Second, once the claimant has established a prima facie case, the burden shifts to the  
2 prosecutor to articulate a race-neutral or gender-neutral explanation for the challenge. *Batson*, 476  
3 U.S. at 97-98; *J.E.B.*, 511 U.S. at 145. Third, the trial court must determine whether the defendant  
4 has established purposeful discrimination. *Batson*, 476 U.S. at 98.

5 Chavez has submitted, as exhibits in this case, the transcripts of his trial, showing the basis  
6 for the *Batson/J.E.B.* claim that he asserts should have been raised on his direct appeal by his  
7 appellate counsel. The transcripts show that the State used peremptory challenges to excuse  
8 potential jurors Christopher Ward and Willie Daniels, both of whom were young men. *See* Exhibit  
9 28, p. 45 (excusing potential juror Christopher Ward); Exhibit 28, p. 62 (excusing potential juror  
10 Willie Daniels). In response to objections by the defense, the prosecutor stated:

11 In terms of Mr. Daniels, Judge, Ms. Pandukht [the other prosecutor] and I did  
12 not want any young males on our jury; specifically, between the ages of 18 and 25, or  
13 what we perceived was they were 18 to 25. Mr. Kyle Askew [another potential juror]  
14 was on our list to exercise our peremptory. However, the Defense did it before we  
15 had a chance.

16 The reason why we waived the next one is because we thought, well, maybe  
17 they're excluding young males as well, so we thought let's give them a chance to  
18 exclude Mr. Daniels. And that was pure strategy, Judge. After they did not exclude  
19 the other young male, then we excluded him.

20 We also excluded Mr. Ward, who was a young male. The reason for that,  
21 Judge, this case involves pornography. It's the State's position that perhaps younger  
22 males may be more inclined to watch pornography, or be involved in it, or at least  
23 have a closer connection with it in the sense that they may be in college, or just  
24 getting out of college, *et cetera*.

25 We did not want that to be an issue in this case, and that's why we let  
26 Mr. Daniels go.

Reporter's Transcript of Jury Trial, December 2, 2008, Exhibit 28, p. 135. The prosecutor also  
stated:

[W]e didn't want any younger males because of the pornography. Certainly, Judge,  
that's not a systematic exclusion of any particular group. It wasn't just males, and it  
wasn't just young people, it was both combined.

*Id.* at 137. Defense counsel argued in response: "[T]he State had stated that their policy was to  
exclude males 18 to 25, and we would argue that that policy in itself violates due process." *Id.* at

1 136. The trial court ruled that there was no *Batson* violation. *Id.* at 140; *see also* Order of  
2 Affirmance, Exhibit 71, p. 10 (Nevada Supreme Court, on the appeal in Chavez’s state habeas  
3 action, ruled that Chavez’s trial counsel “challenged the dismissal of these jurors based on their  
4 gender and the district court denied that challenge”).

5 The prosecutor’s explanation for the State’s use of peremptory challenges to strike potential  
6 jurors Ward and Daniels was not gender-neutral; rather, the peremptory challenges were expressly  
7 motivated, at least in part, by the gender of the potential jurors. It appears to this court, therefore,  
8 that, on Chavez’s direct appeal, there might have been viable grounds for appellate counsel to assert  
9 a *Batson/J.E.B.* claim based on the peremptory challenges of potential jurors Ward and Daniels  
10 because of their gender. Arguably, appellate counsel might have provided ineffective assistance of  
11 counsel by not making such a claim.<sup>6</sup>

12 Chavez initiated his state habeas action *pro se*. In his original *pro se* state habeas petition,  
13 Chavez asserted that his federal constitutional rights were violated by the State’s exclusion of males  
14 18 to 25 from the jury. *See* Petition for Writ of Habeas Corpus, Exhibit 48, pp. 9-12. In response,  
15 the State argued that such a claim should have been raised on direct appeal, and the failure to raise it  
16 on direct appeal constituted a waiver of the claim. *See* State’s Response to Pro Per Petition for Writ  
17 of Habeas Corpus, Exhibit 51, p. 3. Subsequently, after Chavez’s post-conviction counsel appeared  
18 on his behalf in the state habeas action, despite being put on notice by the State that the  
19 *Batson/J.E.B.* claim was arguably waived because it was not asserted on Chavez’s direct appeal,  
20 post-conviction counsel did not assert a claim, either in the state district court or before the Nevada  
21 Supreme Court, that Chavez’s appellate counsel was ineffective for failing to assert the  
22 *Batson/J.E.B.* claim. *See* Supplemental Points and Authorities in Support of Post-Conviction Writ,  
23 Exhibit 57; Appellant’s Opening Brief, Exhibit 66; Appellant’s Reply Brief, Exhibit 68.

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25 <sup>6</sup> Of course, the court does not here rule on the merits of any such claim. The question of the  
26 merits of this possible claim of ineffective assistance of appellate counsel is not before the court. The  
court here rules only that Chavez has made a sufficient showing of a viable claim to support his  
arguments that ineffective assistance of his state post-conviction counsel was cause for his failure to  
exhaust the claim earlier, and that the claim is not plainly meritless.

1 Under these circumstances, the court finds that Chavez has made a sufficient showing that  
2 ineffective assistance of his state post-conviction counsel was good cause for his failure to exhaust,  
3 in his state habeas action, the claim that is Ground 4A in his first amended petition in this action.  
4 The claim in Ground 4A is potentially meritorious. And, there is no indication that Chavez has  
5 engaged in intentionally dilatory litigation tactics. The court will grant Chavez's motion for stay,  
6 and will stay this action pending his exhaustion of claims in state court.<sup>7</sup>

7 The court's intention is that this will be the last time that the court imposes a stay to facilitate  
8 Chavez's exhaustion of claims in state court. Chavez must exhaust all his unexhausted claims in  
9 state court during the stay imposed pursuant to this order.

10 **IT IS THEREFORE ORDERED** that respondents' Motion to Dismiss (ECF No. 20) is  
11 **GRANTED IN PART AND DENIED IN PART**. The motion to dismiss is granted to the extent  
12 that the court finds Grounds 1, 3C (to the extent based on trial counsel's alleged failure to investigate  
13 Wendy Linares), 4A, and 4B to be unexhausted in state court; in all other respects, the motion to  
14 dismiss is denied.

15 **IT IS FURTHER ORDERED** that petitioner's Motion to Stay and Abey Proceedings  
16 (ECF No. 23) is **GRANTED**. This action shall be stayed, while petitioner exhausts, in state court,  
17 all his unexhausted claims for habeas corpus relief. The clerk of the court shall administratively  
18 close this case.


19 **IT IS FURTHER ORDERED** that, within 45 days from the entry of this order, petitioner  
20 shall initiate proceedings in state court to exhaust his unexhausted claims.

21 **IT IS FURTHER ORDERED** that, following the conclusion of petitioner's state court  
22 proceedings, petitioner shall, within 30 days, make a motion to lift the stay of this action.

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25 <sup>7</sup> *Rhines* does not suggest that every unexhausted claim in a petition must satisfy, individually,  
26 the "good cause" and "potentially meritorious" requirements before a stay is permitted. If a stay is  
warranted with respect to a single claim, the court need not conduct a claim-by-claim analysis under  
*Rhines* regarding the remaining unexhausted claims.

Dated this 27th day of July, 2015.

  
UNITED STATES DISTRICT JUDGE